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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 FREDERICK BROWN,
12 Petitioner,
13 v.
14 MR. HEDGPETH, Warden,
15 Respondent.
16

) Case No. CV 12-7126 JVS (JCG)

) **ORDER DENYING MOTION FOR**
) **EXTENSION OF TIME TO FILE**
) **HABEAS PETITION, SUMMARILY**
) **DISMISSING ACTION WITHOUT**
) **PREJUDICE, AND DENYING**
) **CERTIFICATE OF**
) **APPEALABILITY**

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18 **I.**

19 **DISCUSSION**

20 On August 17, 2012, petitioner Frederick Brown (“Petitioner”) filed a
21 “Motion Request for Extension of Time” (“Motion”). In the Motion, Petitioner
22 seeks an extension of time to file a petition for writ of habeas corpus – *before*
23 actually filing the petition itself. (Mot. at 1-2.)

24 The exercise of federal jurisdiction under the Constitution depends on the
25 existence of a case or controversy. If the Court does not have an actual case or
26 controversy before it, the Court lacks the power to hear the matter in question. *City*
27 *of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (“It goes without saying that those
28 who seek to invoke the jurisdiction of the federal courts must satisfy the threshold

1 requirement imposed by Article III of the Constitution by alleging an actual case or
2 controversy.”).

3 Here, there is no case or controversy. Petitioner’s Motion is not tied to any
4 action currently pending before this Court. Instead, Petitioner essentially seeks an
5 improper advisory opinion regarding the timeliness of an anticipated habeas petition,
6 if and when that petition is filed at some unspecified date in the future. Such a
7 request cannot be entertained by the Court without offending the Constitution’s case
8 or controversy requirement. *McDade v. Warden*, 2010 WL 4795377, at *1-2 (C.D.
9 Cal. Nov. 16, 2010) (holding that request for extension of time to avoid statutory
10 limitations period does not present a case or controversy); *Soto v. Warden*, 2009 WL
11 1705471, at *1-2 (C.D. Cal. June 16, 2009) (adopting recommendation that request
12 for extension of time be dismissed because federal court lacked jurisdiction to
13 consider it); *United States v. Leon*, 203 F.3d 162, 164 (2d Cir. 2000) (*per curiam*)
14 (holding that federal court lacked jurisdiction to consider the timeliness of a § 2255
15 petition because no petition had yet been filed).

16 If Petitioner submits a proper habeas petition, the Court will then consider the
17 timeliness of that petition, but not before.

18 II.

19 CERTIFICATE OF APPEALABILITY

20 The Court finds that Petitioner has not shown that jurists of reason would find
21 it debatable whether the Court was correct in its procedural ruling. *See Slack v.*
22 *McDaniel*, 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a certificate
23 of appealability.

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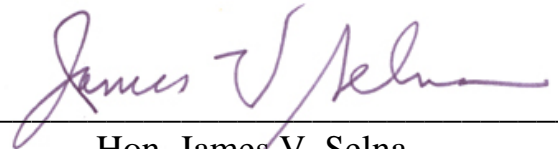
1 **III.**

2 **ORDER**

3 For the foregoing reasons, **IT IS HEREBY ORDERED** that: (1) Petitioner's
4 Motion is **DENIED**; (2) a certificate of appealability is **DENIED**; and (3) this action
5 is **SUMMARILY DISMISSED WITHOUT PREJUDICE**.

6 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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9 DATED: August 22, 2012



10 Hon. James V. Selna
11 United States District Judge
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